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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

DECISION

ENE/172512

PRELIMINARY RECITALS

Pursuant to a petition filed March 04, 2016, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Outagamie County Department of Human Services in regard to Energy Assistance, a hearing was held on April 14, 2016, at Appleton, Wisconsin.

The issue for determination is whether Outagamie County Energy Services (the agency) correctly calculated the amount of Petitioner's energy assistance benefit.

NOTE: The record was held open until April 21, 2016, to allow the Petitioner to submit a copy of his utility bill and copies of his grocery receipts. They have been marked collectively as Exhibit 7 and entered into the record.

The record was also held open to give the agency an opportunity to provide the mathematical formula used to determine the amount of energy assistance an individual is entitled to, and to provide documentation of the energy expense it used to calculate Petitioner's benefit. No such documentation was submitted by the designated deadline.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Administration
101 East Wilson Street
Madison, Wisconsin 53703

By: [REDACTED], Program Manager for Energy Services
Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Outagamie County.
2. On August 31, 2015, the Petitioner applied for energy assistance. (Exhibit 2)
3. On or about November 23, 2015, the agency issued payments to WE Energies totaling \$319.00. (Exhibit 3)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 3, 2016. (Exhibit 1)

DISCUSSION

Given that the Petitioner applied for benefits in August 2015 and received them in November 2015, I have some concerns about the timeliness of Petitioner's appeal. However, the agency did not provide me with a copy of a notice that explained to the Petitioner, what his benefit amount was, how they calculated the calculated the benefit and what his appeal rights were. As such, I must find Petitioner's appeal timely.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in Hanson stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. In this case, there was no dispute that the Petitioner was eligible for Energy Assistance. The agency then has the burden to show that it correctly processed Petitioner's application for the Energy Assistance program.

Based on the information before me, I cannot determine that it has done so.

The Petitioner asserts that the agency has not correctly calculated his energy assistance benefit. The Petitioner's bases his belief upon the fact that his financial situation has not changed, but his benefit was lower for the 2015/2016 season (\$319.00), than it was for the 2014/2015 season (\$373.00). (See Exhibit 3)

The agency was not able to provide the mathematical formula used to calculate the benefit, nor was the agency able to explain how the benefit was calculated, beyond plugging numbers into a computer program and letting it run. As such, there is no basis upon which to uphold the calculation.

I note, that the agency also failed to provide me with any documentation to substantiate the numbers they put into the formula, i.e. proof of income, or proof of energy usage / expense, etc.

CONCLUSIONS OF LAW

The agency has not met its burden to prove it correctly calculated the amount of Petitioner's energy assistance.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency to take the administrative steps necessary to re-determine Petitioner's Energy Assistance for the 2015/2016 season and to issue a notice of decision regarding same,

explaining how the awarded amounts were determined, with a copy to the DHA so that any formula used can be shared with the administrative law judges who hear these cases.

These actions shall be taken within 10 days of the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

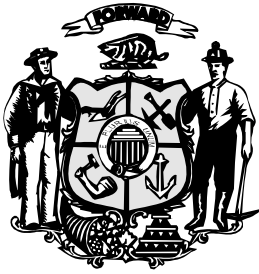
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Administration, 101 East Wilson Street, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 22nd day of April, 2016

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 22, 2016.

Outagamie County Department of Human Services
DOA - Energy Assistance